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FEDERAL COMMUNICATIONS COMMISSION

In re:)	FCC 98M-47
)	
LEWIS B. ARNOLD)	
Chewelah, Washington)	CIB DOCKET NO. 98-45
)	
Order to Show Cause Why a)	
Cease and Desist Order)	
Should Not Be Issued)	

Pages: 1 through 9

Place: Washington, D.C.

Date: May 18, 1998

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:) FCC 98M-47
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LEWIS B. ARNOLD)
Chewelah, Washington) CIB DOCKET NO. 98-45
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Order to Show Cause Why a)
Cease and Desist Order)
Should Not Be Issued)

Room 234
Federal Communications
Commission
2000 L Street, N.W.
Washington, D.C.

Monday,
May 18, 1998

The parties met, pursuant to the notice of the
Administrative Law Judge, at 9:00 a.m.

BEFORE: ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

For the Plaintiff:

SONIA A. GREENAWAY - Attorney Advisor
Federal Communications Commission
Mass Media Bureau -
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(202) 418-1419

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APPEARANCES: (Cont'd)

Also for the Plaintiff:

PAMELA D. HAIRSTON, ESQ.
Federal Communications Commission
Chief Compliance Division
CIB
1919 M Street, N.W.
Washington, D.C. 20554
(202) 418-1160

For the Defendant:

No appearance

P R O C E E D I N G S

THE COURT: This is a pre-hearing conference in CIB Docket No. 98-45 involving an Order to Show Cause and Notice of Opportunity for Hearing directed against Lewis B. Arnold of Chewelah, Washington. By order released April 16, 1998, the acting Chief Administrative Law Judge assigned the case to me.

Let me first take the appearances for Lewis B. Arnold.

Let the record reflect, no response.

For the Chief Compliance and Information Bureau?

MS. GREENAWAY: Sonia Greenaway.

MS. HAIRSTON: And also, Your Honor, Pam Hairston.

THE COURT: The first thing I would like to discuss is the Notice of Appearance. Paragraph 10 of the Order to Show Cause and Notice of Opportunity for Hearing, FCC 98-61 released April 6, 1998, which I will refer to as the OSC, citing Section 1.91C of the Commission's Rules, directed Mr. Arnold to file within 20 days of the mailing of the OSC, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the OSC.

According to the Commission's records, the OSC was mailed to Mr. Arnold on April 8, 1998. And I will note that it was mailed by certified mail, return receipt requested.

1 And that the Commission's records contain a return receipt
2 showing that the OSC was delivered on April 16, 1998.

3 Therefore, based on the mailing date of April 8,
4 Mr. Arnold's written appearance was due to be filed on April
5 28, 1998, which is nearly three weeks ago. To date, I have
6 not seen, and the Commission has no official record
7 reflecting the filing of any written appearance by or on
8 behalf of Mr. Arnold.

9 Let me ask Ms. Greenaway. Has the Bureau seen
10 such an appearance?

11 MS. GREENAWAY: No, Your Honor.

12 THE COURT: Okay. Now, the next thing I have is,
13 how do we proceed from here? I have some ideas of my own,
14 but let me hear your ideas, first, if you have any.

15 MS. GREENAWAY: Well, Your Honor, we would ask,
16 since Mr. Arnold has not appeared, and there is no notice of
17 his appearance, we would ask that the case be certified to
18 the Commission. And the fact is that we also sent in
19 request for admissions. I believe the date was May 11. And
20 we would ask that the case be certified to Commission
21 subject to any kind of response from Mr. Arnold regarding
22 those admissions.

23 THE COURT: So, what you want me to do is wait?
24 Okay, May 11 is the date of the admissions. And you gave
25 him 10 days within which to respond. Let me just check.

1 MS. GREENAWAY: We have the copy here.

2 THE COURT: Yes, within 10 days from the receipt
3 of this request. So, figure he receives it in three or four
4 days. It is May 11. Figure May 15. And then ten days from
5 that would be May 25. And then we would wait an adequate
6 period of time for him to -- for us to get the response.

7 I don't think we need to do that because under
8 Section 1.92A(1), "Failure to file a timely written
9 appearance indicating that the Respondent will appear at the
10 hearing and present evidence on the matters specified in the
11 OSC "will constitute a waiver of such hearing."" And under
12 1.92C, whenever a hearing is waived by, among other things,
13 the failure to file a timely written appearance, the
14 presiding judge "shall" -- and I emphasize the word
15 "shall" -- at the earliest practical date, issue an order
16 reciting the events or circumstances constituting a waiver
17 of the hearing terminating the hearing proceeding and
18 certifying the case to the Commission.

19 And I would think that he hasn't filed a notice of
20 appearance which automatically constitutes a waiver. And I
21 don't think we have to wait for a response to the
22 admissions, if any. I think I can dismiss them as moot. I
23 can terminate the case, certify it to the Commission, and
24 then dismiss the request for admissions as moot. I don't
25 think we have to wait. Unless you want me to wait, I

1 will --

2 MS. GREENAWAY: Your Honor --

3 THE COURT: -- because he would still have to file
4 a Notice of Appearance. And if he filed one today, he would
5 still have to show good cause for not filing it in a timely
6 manner. And I don't know if he could do that. Maybe he
7 could. Maybe he has been out of the country for a month or
8 two.

9 MS. GREENAWAY: Your Honor, that was a suggestion.
10 And the fact is, as you say, he hasn't filed anything. We
11 haven't received any kind of correspondence from him.

12 THE COURT: Right.

13 MS GREENAWAY: So, I believe we wouldn't have any
14 objection to taking that position that you suggested.

15 THE COURT: Okay. Do you want to go off the
16 record and confer with anybody?

17 MS. GREENAWAY: For a moment.

18 THE COURT: Yes. Why don't you do that? We will
19 go off the record and then you can confer, because I don't
20 want to push you into doing something you don't want to do.
21 If you want to wait to see what happens, we can do that.
22 But if we do that -- I'll tell you. Let's say he files a
23 response to the request for admissions, and he denies
24 everything. Or if he just says something -- just sends
25 something in and saying, "What is this? This is ridiculous.

1 I don't have do to this."

2 I would be prepared here -- I mean, what I will do
3 -- if we are going to wait, I will set dates for the
4 hearing. And if we get any kind of response, -- let's see
5 if he shows up. Because I don't want to wait and than have
6 another conference to set dates. And I will tell you the
7 hearing date I am thinking of is June 24. So, this is going
8 to hearing. I think you will want it to go to hearing
9 pretty quickly. So, I don't think you want to play around
10 with any of these cases.

11 So, I mean, basically, the alternatives that I am
12 giving you are, I can proceed under 1.92C, terminate the
13 case, certify it to the Commission, dismiss their request
14 for admissions as moot. That would all be in one order.
15 Or, we can wait. I will set dates for an exhibit exchange,
16 notification of witnesses desired for cross-examination and
17 a hearing date. And if he does not respond to the request
18 for admissions within a reasonable time, than I would expect
19 a motion from you asking me to take action on the 1.92C,
20 because you are going to be the one to determine whether we
21 have waited long enough.

22 My personal view is, as of today, we have waited
23 long enough. And we haven't received -- you haven't gotten
24 a phone call, have you?

25 MS. GREENAWAY: No, Your Honor.

1 THE COURT: And we haven't gotten a phone call.
2 We haven't gotten a piece of paper. I know in other cases
3 of this nature, we have gotten pieces of paper. I don't
4 know what to call some of the pieces of paper, but we have
5 gotten pieces of paper. Here, we have gotten nothing. And
6 I don't see much point in waiting.

7 But why don't we go off the record, and then take
8 as long as you need to confer. And then tell me when you
9 are ready, and than we will go back on and talk about it
10 more. So, we will go off the record.

11 MS. GREENAWAY: Okay. Thank you.

12 (Discussion held off the record.)

13 THE COURT: We are back on the record.

14 MS. GREENAWAY: Okay. Thank you, Your Honor. We
15 would ask that the case be certified to the Commission, and
16 that the proceeding be terminated, as well.

17 THE COURT: Okay. So then, I will go under Option
18 A, which I will proceed under 1.92C, and then I will dismiss
19 your request for admissions as moot. And I will send a copy
20 of this to Mr. Arnold at both of his addresses by certified
21 mail, return receipt requested. And that should take care
22 of it. And then it will be up to the Commission as to what
23 they wanted to do from that point on.
24 Then, we will just see what happens.

25 Is there anything further that we need to do today?

1 MS. GREENAWAY: No, Your Honor.

2 THE COURT: Okay. So, this will conclude the pre-
3 hearing conference, and then I will get something out on it
4 within the next couple of days.

5 Thank you very much.

6 MS. GREENAWAY: Thank you.

7 MS. HAIRSTON: Thank you.

8 (Whereupon, at 9:15 a.m., the hearing was
9 concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: CIB98-45, FCC 98M-47

CASE TITLE: Lewis B. Arnold

HEARING DATE: May 18, 1998

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 5/18/98

Michael Conrad
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005
Michael Conrad

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 5/20/98

Nancy McHugh
Official Transcriber
Heritage Reporting Corporation
Nancy McHugh

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 5/28/98

Scott David Britt
Official Proofreader
Heritage Reporting Corporation
Scott David Britt